

### REMARKS

Claims 1-16, 18, 19, 35 and 36 are pending, with claims 1, 35 and 36, being independent. Claims 17 and 20-34 were previously canceled. Each of the issues raised in the Office Action area addressed below.

#### *§ 102 Prior Art Rejection*

Claims 1, 2, 4-14, 18, 19, 35 and 36 were rejected under 35 U.S.C. §102 as being anticipated by U.S. patent no. 599,273 (Wahtola). For the following reasons, the claimed invention is patentable for the following reasons.

Applicants respectfully submit that the claimed invention is patentable over the prior art for at least two reasons. First, the cited reference Wahtola is non-analogous art, and thus, cannot be used as a prior art reference against the pending claims, and secondly, even assuming, *arguendo* that Wahtola is available as prior art, the reference does not recite each and every feature recited in each of the independent claims.

It is well established that in order for an examiner to rely on a reference as a basis for rejection of an invention, "the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." See M.P.E.P. §2141.01(a); see also *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1993). Accordingly, Applicants respectfully submit that Wahtola is neither in the field of Applicants' endeavor, nor reasonably pertinent to the particular problem with which the inventors were concerned.

Applicants' field of endeavor is that of the processing of multiple samples of biological cells in a processing device (see "Field of the Invention", specification, page 1, lines 12-14). Further evidence of this field may be found throughout the application. Wahtola, on the other hand, is directed to the fields of diaphragm pumps for pumping water (specification page 1,

lines 14-23; page 2, lines 35-59; Fig. 1). Thus, it is clearly apparent that the Wahtola reference is not related to the field of Applicants' endeavor.

The particular problem to which the inventors of the present application are concerned is that of simultaneous independent processing of a number of separate samples at one time in a centrifugal device. For example, as recited in claim 1, the problem is solved using a multiple sample processing apparatus, which includes a plurality of axially aligned processing chambers and expressor chambers, where each chamber includes an axial opening housing a central hub. A respective central hub of a respective chamber includes at least one first dedicated passageway aligned substantially parallel to a central axis of the hub dedicated for fluid communication with a first chamber and at least one second dedicated passageway aligned substantially parallel to the central axis of the hub for fluid communication with a second chamber. Thus, each hub includes a dedicated port for a particular expressor or processing chamber.

Accordingly, it is unclear how the problem solved in Wahtola (pumping water on both an upward and downward stroke) is in any way related to the problem solved in the presently claimed invention - that is, the simultaneous and independent processing of a number of separate samples of biological material at once. Accordingly, the problem solved in Wahtola is not reasonable pertinent to the problem with which the inventors of the present claimed invention were concerned.

In view of the above reasons, Applicants respectfully submit that Wahtola is non-analogous art and is not available to be used in either a §102 or a §103 rejection of the present claims.

While Applicants maintain that Wahtola is non-analogous art, Applicants would also like to point out that even if Wahtola could be used as prior art (which it cannot for the reasons expressed above), Wahtola does not recite each and every feature recited in the independent claims.

Independent claim 1 is directed to a multiple sample processing apparatus for a continuous flow centrifuge. The apparatus includes a plurality of axially aligned processing chambers and expressor chambers, where each chamber includes an axial opening housing a central hub. A respective central hub of a respective chamber includes at least one first dedicated passageway aligned substantially parallel to a central axis of the hub dedicated to fluid communicate with a first chamber and at least one second passageway aligned substantially parallel to the central axis of the hub and dedicated to fluid communicate with a second chamber. Independent claims 35 and 36 recite the same patentable features.

As understood by Applicants, Wahtola, on the other hand, is directed to a diaphragm pump, in which water can be pumped during both an upward and downward stroke. After a thorough review of this reference, Applicants could find nothing which discloses a plurality of processing chambers. Moreover, Wahtola does not disclose a hub having a first passageway dedicated to fluid communicate to one chamber and a second passageway dedicated to fluid communicate to a second chamber. For at least these reasons, claims 1, 35 and 36 (as well as the corresponding dependent claims) are patentable over Wahtola. However, Applicants again respectfully point out that Wahtola is non-analogous prior art (see points expressed above), and thus, cannot be used as prior art against the current claimed invention.

Accordingly, for the reasons discussed above, Applicants respectfully request that the §102 rejection be withdrawn, and the pending application allowed.

### *§ 103 Rejection*

Claim 15 was rejected under 35 U.S.C. §103 in view of Wahtola. Since Wahtola is non-analogous art, and thus, unavailable to be applied against claim 15, this rejection is now considered moot.<sup>1</sup>

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<sup>1</sup> Even assuming Wahtola is available as prior art (which Applicants contend it is not), claim 15 is patentable for the same reasons that distinguish claim 1 over Wahtola.

CONCLUSION

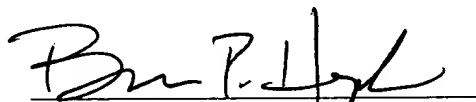
In view of the foregoing remarks, Applicants submit that the issues raised in the outstanding Office Action have all been addressed. Accordingly, Applicants respectfully request favorable reconsideration and early passage to issue of the present application. Applicants submit that the present Response is an earnest attempt to further prosecution on the merits and resolve the issues from the outstanding Final Office Action. Accordingly, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

No fee is currently due for the present response. However, in the event that it is determined that additional fees are due, the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. **50-0311**, Ref. No. **18405-115**, Customer No. **35437**.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 935-3000. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

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